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**JUN 08 2004**

**OFFICE OF PETITIONS**

In re Application of  
Klein, et al.  
Application No. 10/626,164  
Filed: July 23, 2003  
Attorney Docket No. KN-62

ON PETITION

This is a decision on the "RESUBMISSION OF PATENT APPLICATION AND PETITION TO AWARD A FILING DATE OF JULY 23, 2003", filed February 17, 2004, which is being treated as a petition under 37 CFR 1.10 to accord the above-identified application a filing date of July 23, 2003.

The petition is **GRANTED**.

Petitioner argues that the above-identified application was filed on July 23, 2003, despite the fact that petitioner has not received a filing receipt or returned PTO date stamped postcard. In support thereof, petitioner has included a copy of a cover sheet itemizing the application, bearing Express Mail number EV 199311370 US.

37 CFR 1.10(e) states that any person mailing correspondence addressed to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Here, the petition was filed promptly. Petitioner included a copy of the Express Mail mailing label, as well a copy of the application with the number of the Express Mail mailing label thereon. Petitioner also included a satisfactory statement regarding the deposit of the correspondence.

In view of the above, the application is entitled to a filing date of July 23, 2003.

Given the basis for granting this petition, the petition fee will be refunded to petitioner under separate cover.

Application No. 10/626,164

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of **July 23, 2003**.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo  
Petitions Attorney  
Office of Petitions